

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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In re

Chapter 9

CITY OF DETROIT, MICHIGAN,

Case No. 13-53846

Debtor.

Hon. Steven W. Rhodes

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**OBJECTIONS OF CREDITORS DWAYNE PROVIENCE, RICHARD MACK,  
AND GERALD AND ALECIA WILCOX, INTERESTED PARTIES,  
TO AMENDED PLAN FOR THE ADJUSTMENT OF DEBTS OF  
THE CITY OF DETROIT**

NOW COME DWAYNE PROVIENCE, RICHARD MACK, AND GERALD and ALECIA WILCOX, interested parties and object to the “*Amended Plan for the Adjustment of Debts of the City of Detroit (March 31, 2014)*.” [Dkt. #3380] In support of these objections, the interested parties state the following:

1. Each of the four petitioners are individuals whose lives have been adversely affected by the unconstitutional acts of the City of Detroit (“Debtor”) and its officials. The Petitioners have brought actions in the United States District Court for the Eastern District of Michigan to vindicate their rights, to wit:

- a. *Dwayne Provience v City of Detroit, et al., Civ. Action No. 10-cv-11719;*
- b. *Richard Mack v City of Detroit, et al., Civ. Action No. 12-cv-10300;*
- c. *Gerald and Alecia Wilcox v City of Detroit, et al., Civ. Action No. 13-cv-41679.*

**[Exhibits 1, 2, and 3; underlying Complaints filed in the Eastern District of Michigan]**

2. Each of the aforementioned complaints was filed pursuant to the Civil Rights Act of 1871, 42 U.S.C. §§ 1983, 1985, and 28 U.S.C. § 1343. The cases all share certain

characteristics, including:

- a. **Dwayne Provience (C.A. # 10-cv-11719):** In 2001, Dwayne Provience was wrongfully convicted for the crime of second degree murder which he did not commit, resulting in almost 10 years of prison. He filed claims against the City of Detroit and its official, Sgt. David Moore, arising out of his unconstitutional wrongful conviction. Specifically, Plaintiff alleged violations of his constitutional right to due process, as set forth in the 14<sup>th</sup> Amendment and *Brady v Maryland*, 373 U.S. 83 (1963). [See Complaint, Exhibit 1].
- b. **Richard Mack (C.A. # 12-cv-10300):** Mr. Mack was severely beaten by Detroit Police Officers Mia Nikolich and Robert Nill, after contacting police to come to the aid of his daughter, who was involved in a domestic violence incident with her then-boyfriend. Mr. Mack suffered severe back and neck injuries, resulting in multiple surgeries and life long impairments. Mr. Mack's claims against the City of Detroit and its officials implicate the 4<sup>th</sup> Amendment of the United States Constitution with the officials' use of excessive force. [See Complaint, Exhibit 2].
- c. **Gerald and Alecia Wilcox (C. A. # 13-cv-41679):** Gerald and Alecia Wilcox filed claims against the City of Detroit and its officials, Samuel Dunigan, Eric Smigelski, and Brian Headapohl, for the unconstitutional false arrest and malicious prosecution in connection with the robbery of a Family Dollar store. Defendants knowingly arrested and jailed Gerald Wilcox because he had the same name of the suspect in the robbery. The Wilcoxes' claims implicate the 4<sup>th</sup> and 14<sup>th</sup> Amendment of the United States Constitution.  
[See Amended Complaint, Exhibit 3].

3. On July 18, 2013, the Debtor filed for an adjudication of bankruptcy, pursuant to Chapter 9 of the Bankruptcy Code. [Dkt. #1]

4. On July 25, 2013, this Court entered both automatic and extended Stays of Proceedings [Dkt. #s 166 and 167]. The Stays had the effect of stopping all proceedings in the aforementioned cases.

5. To date, there has been no relief from the Stays imposed by this Court for the petitioners identified in these objections. Thus, each of the instant petitioners anticipate that the

violations of their constitutional rights, as set forth above, will never be fully vindicated.

6. The Debtor's March 31, 2014, Amended Plan of Adjustment, specifically, Paragraph 191, proposes that § 1983 claims "are included within the definition of Other Unsecured Claims." **[Dkt. #3380, Paragraph 191]**

7. Debtor's Amended Plan runs counter to the purpose and intent of the 14<sup>th</sup> Amendment § 1983, as explained by the Supreme Court. See *Felder v Casey*, 487 U.S. 131, 148 (1988) (recognizing that civil rights actions "belong in court") (quoting *Burnett v Grattan*, 468 U.S. 42, 50, (1984)).

8. The Debtor's *Amended Plan of Adjustment*, **[Dkt. #3380]**, diminishes Petitioners' rights to full vindication of the egregious violations of their constitutional rights, including full compensation for their damages, as well their right to recover attorney fees and punitive damages. The Debtor's *Amended Plan* is unconstitutional to the extent that it diminishes, in any fashion, the Petitioners' constitutional rights, as well those of other petitioners who have claims arising from violations of their constitutional rights currently pending against the City of Detroit.

9. The instant Petitioners expressly incorporate by reference the objections and reasoning set forth by Creditors, Deborah Ryan, Walter Swift, Cristobal Mendoza and Annica Cuppetelli, set forth in their Objections and supporting brief, filed on April 15, 2014. **[Dkt. #4099 and 4099-2, respectively].**

WHEREFORE, for the reasons stated above, the Petitioners request that this Court provide the following relief:

A. Determine that the *Amended Plan* **[Dkt. #3380]** is in violation of the Fourteenth Amendment of the United States Constitution as it applies to Petitioners herein and may apply to all persons asserting claims against the debtor pursuant to 42 U.S.C. §1983 and the United States Constitution;

- B. Issue an Order that rejects the *Amended Plan* [**Dkt. #3380**] and denies the relief sought therein as it applies to Petitioners herein and all persons asserting claims against the Debtor pursuant to 42 U.S.C. §1983 and the United States Constitution;
- C. Require the Debtor to set forth a revised Amended Plan that exempts claims brought under 42 U.S.C. §§1983 and 1988 from any resolution short of full and complete compensation, including their damages, attorney fees and punitive damages, where appropriate.

Respectfully submitted,

OLSMAN, MUELLER, WALLACE  
& MacKENZIE, P.C.

/s/Wolfgang Mueller  
WOLFGANG MUELLER  
Attorney for Creditors, Dwayne Provience,  
Richard Mack and Gerald and Alecia Wilcox  
2684 W. 11 Mile Road  
Berkley, MI 48072  
(248) 591-2300  
[wmueller@olsmanlaw.com](mailto:wmueller@olsmanlaw.com)  
(P43728)

Date: April 22, 2014

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
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**EXHIBIT LIST**

Exhibit #      Description

- 1      Complaint in *Dwayne Provience v City of Detroit, et al.*
- 2      Complaint in *Richard Mack v City of Detroit, et al.*
- 3      Amended Complaint in *Gerald and Alecia Wilcox v City of Detroit,*

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 22, 2014, I served the following Paper:

Objections of Creditors Dwayne Provience, Richard Mack, and Gerald and Alecia Wilcox, Interested Parties, to Amended Plan for the Adjustment of Debts of the City of Detroit

on the following parties:

David G. Heiman  
Heather Lennox  
Thomas A. Wilson  
JONES DAY  
North Point  
901 Lakeside Avenue  
Cleveland, OH 44114  
[dgheiman@jonesday.com](mailto:dgheiman@jonesday.com)  
[hlennox@jonesday.com](mailto:hlennox@jonesday.com)  
[tawilson@jonesday.com](mailto:tawilson@jonesday.com)

Bruce Bennett  
JONES DAY  
555 South Flower Street  
Fiftieth Floor  
Los Angeles, CA 90071  
[bbennett@jonesday.com](mailto:bbennett@jonesday.com)

Jonathan S. Green  
Stephen S. LaPlante  
MILLER, CANFIELD,  
PADDOCK AND STONE, PLC  
150 West Jefferson  
Suite 2500  
Detroit, MI 48226  
[green@millercanfield.com](mailto:green@millercanfield.com)  
[laplante@millercanfield.com](mailto:laplante@millercanfield.com)

by the following means: the Court's ECF system.

Respectfully submitted,

/s/Wolfgang Mueller  
Attorney for Creditors, Dwayne Provience,  
Richard Mack and Gerald and Alecia Wilcox  
2684 West Eleven Mile Road  
Berkley, MI 48072  
(248) 591-2300  
[wmueller@olsmanlaw.com](mailto:wmueller@olsmanlaw.com)  
(P43728)